

## REMARKS

The Office Action dated August 10, 2007 has been received and carefully reviewed. The preceding amendments and the following remarks form a full and complete response thereto. Claims 21-23 are amended as to matters of form only. Claims 24-26 are added. No new matter is added. Claims 10-26 are pending in this application. Reconsideration and allowance in view of the foregoing amendments and following remarks are requested.

Claims 10-20 are allowed.

### Claim Amendment

Claims 21-23 have been amended to recite a computer-readable medium storing computer-executable instructions for performing embroidery data creation. Support for these amendments can be found, inter alia, in FIG. 1 (ref. 28) and page 12, lines 23-25.

### New Claims

Claims 24-26 have been added. Support for these claims can be found, inter alia, on page 12, lines 22-23 of the application. Claims 24-26 are patentable at least due to their dependency on allowed claims 10 and 18 and patentable claim 21, respectively.

### Claim Rejection under 35 U.S.C. § 101

Claims 21-23 were rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Claims 21-23 have been amended to recite a computer-readable medium storing computer-executable instructions for embroidery data creation. A computer readable medium encoded with a program is an element which defines structural and functional interrelationships between the program and the rest of the device which permit the program's functionality to be realized, and is thus statutory. MPEP § 2106(II)(B)(1)(a). Therefore amended claim 21, and amended claims 22 and 23 by their dependency on claim 21, meet the requirements of 35 U.S.C. § 101. Applicants submit that claims 21-23 are in condition for allowance and request that the rejection be withdrawn.

In view of the above remarks, it is believed that the claims satisfy the requirements of the patent statutes and are patentable over the cited art. Reconsideration of the instant application

and early notice of allowance are requested. The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

In the event that this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

Date: 11/9/07

By 

Brian A. Tollefson  
Attorney for Applicants  
Registration No. 46,338  
ROTHWELL, FIGG, ERNST & MANBECK, p.c.  
Suite 800, 1425 K Street, N.W.  
Washington, D.C. 20005  
Telephone: (202)783-6040